

## DEVELOPMENT AGREEMENT AMENDMENT NO. 1

**THIS DEVELOPMENT AGREEMENT** (herein the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Tim Soffe, (herein “Developer”) for the land to be included in or affected by the project located at approximately 3000 South Decker Lake Blvd., and West Valley City, a municipal corporation and political subdivision of the State of Utah (herein the “City”).

### RECITALS

**WHEREAS**, Developer owns approximately 17.39 acres of real property located within the City limits of West Valley City, Utah as described in Exhibit “A” (the “Property”), on which Developer proposes the development of residential multi-family housing units (herein the “Project”); and

**WHEREAS**, Developer has voluntarily represented to the West Valley City Council that it will enter into this binding Development Agreement; and

**WHEREAS**, Developer is willing to design and develop the Project in a manner that is in harmony with the objectives of the City’s master plan and long-range development objectives and which addresses the more specific development issues set forth in this Agreement and is willing to abide by the terms of this Agreement; and

**WHEREAS**, The City, acting pursuant to its authority under UTAH CODE ANNOTATED § 10-9-101, et seq., and its ordinances, resolutions, and regulations and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries is attached as Exhibit “A.” No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land-use plans, policies, ordinances and

regulations after the date of this Agreement, provided that the adoption and exercise of such power shall not restrict Developer's vested rights to develop the Project as provided herein. This Agreement is not intended to and does not bind the West Valley City Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

3. **Compliance with City Design and Construction Standards.** Developer acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable laws and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with the City's design and construction standards.

4. **Specific Design Conditions.** The Project shall be developed and constructed as set forth in the specific design conditions set forth in Exhibit "B." The Project shall also comply with all requirements set forth in the minutes of the Planning Commission and City Council hearings on this matter.

5. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, shall encumber the same, and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property.

6. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning also the responsibilities arising hereunder. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

7. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

8. **Integration.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

9. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for who intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as follows:

TO: Tim Soffe  
5151 South 900 East, Suite 200  
Salt Lake City, UT 84117  
Phone: 801-971-9203 (cell) or 801-269-0055 (work)  
E-mail: tsoffe@aswn.com

TO: West Valley City  
Wayne Pyle, City Manager  
3600 Constitution Blvd.  
West Valley City, Utah 84119

Any party may change its address by giving written notice to the other party in accordance with the provisions of this section.

10. **Law**. Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah.

11. **Court Costs**. In the event of any litigation between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to an award of reasonable court costs, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**WEST VALLEY CITY**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

APPROVED AS TO FORM  
WVC Attorney's Office

By: \_\_\_\_\_

Date: \_\_\_\_\_

**DEVELOPER**

\_\_\_\_\_  
Tim Soffe

STATE OF UTAH

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COUNTY OF \_\_\_\_\_

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On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally appeared before me **TIM SOFFE**, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

## **Exhibit A**

Parcel #: 15-28-276-009

BEG N 650.25 FT & W 24.43 FT M OR L FR E 1/4 COR SEC 28, T1S, R 1W, SLM; N 85°29'51" W 396.21 FT; N 4°30'09" E 243.93 FT; S 89°55'56" W 549.65 FT; S 24°33'42" E 228.97 FT; N 85°29'51" W 279.78 FT; N 51°52'51" W 31.97 FT; N 3°35'27" W 525.72 FT; N 89°45'22" E 164.41 FT; N 0°14'38" W 115 FT; S 89°45'22" W 171.14 FT; N 3°35'28" W 55.18 FT; N 89°45' 14" E 200.34 FT; S 3°35'28" E 6.86 FT; E 1001.17 FT; S 0° 02'04" E 711.03 FT; S 66°25'33" E 21.62 FT; SW'LY ALG 562.67 FT RADIUS CURVE TO L 88.14 FT TO BEG. 17.39 AC M OR L.

## Executive Summary

### Exhibit B

1. ~~All dwelling units constructed on the property shall be developed as for sale product, owner occupied units and not rental housing.~~
2. Upon completion of all of the on-site improvements, the developer shall provide a letter to the City from an independent engineering firm which certifies that all of the on-site improvements are completed as shown on the plans approved by the City. For the purposes of this agreement, on-site improvements shall include landscaping; irrigation; private streets; roundabouts; sidewalks; trails; parking; lighting; entrance features; fencing; outdoor recreational amenities such as playground equipment, picnic tables, benches, and pavilions; and other similar improvements.
3. Before the responsibility for maintenance of the on-site improvements is transferred from the developer to the ~~homeowner's association and~~ professional management company, an on-site meeting shall be held between the developer, City staff, ~~homeowner's association representatives~~ and representatives from the professional management company. The purpose for the meeting shall be to allow the ~~homeowner's association and~~ professional management company to inspect the on-site improvements for completeness and condition. The ~~homeowner's association and~~ professional management company shall provide the developer a written list of any on-site improvements that are found missing or in poor condition. The developer shall install or replace the listed on-site improvements before the responsibility for maintenance of the on-site improvements is transferred from the developer to the ~~homeowner's association and~~ professional management company.
4. The responsibility for maintenance of the on-site improvements shall not be transferred from the developer to the ~~homeowner's association and~~ professional management company until at least 75% of the dwelling units have been sold rented.